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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 09/30/2022

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September 30, 2022

Via ECF

Honorable Valerie E. Caproni, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: *Barrera v. Forlini's Restaurant, Inc., et al.*
Case No. 1:22-cv-01256

Dear Judge Caproni:

We are counsel to Plaintiff in the above-referenced matter. We write to respectfully request that Your Honor grant Plaintiff an extension of time to file a Notice of Appeal in this matter under Rule 4(a)(5)(A)(ii) of the Federal Rules of Civil Procedure. The Order from which Plaintiff seeks to appeal is Your Honor's Order denying Plaintiff's Motion for Conditional Collective Certification, dated August 12, 2022 (Dkt. No. 46). There is good cause to grant Plaintiff an extension to file the Notice of Appeal because Plaintiff believes that the Court is consistently applying a novel heightened standard for Conditional Collective Certification under The Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*

In this matter and in another recently decided by Your Honor, *Caicedo v. The Anthem Companies, Inc.* (S.D.N.Y. 1:21-cv-05642), plaintiffs were denied conditional collective certification. We believe that the Court has applied a heightened standard to conditionally certify a collective class that is not mandated by legislation which suffer claimants an almost impossible standard to satisfy in the early pre-discovery phase. We believe that it is proper to obtain appellate review to ascertain whether the standard, as recently implemented by the Court, is accurate. This would help guide both my firm and others to minimize filings which may not satisfy the Court's applied standard.

As such, given the strong policy concerns to clarify the standard for a collective certification for this District and the entire Circuit generally, we respectfully request Your Honor grant Plaintiff an extension of time to file a Notice of Appeal. We thank the Court for considering this matter.

Respectfully submitted,

/s/ C.K. Lee

C.K. Lee, Esq.

cc: all parties via ECF

Application DENIED. Construing Plaintiff's motion as a request for an extension of time to appeal under Federal Rule of Appellate Procedure 4(a)(5), Plaintiff has failed to show "good cause" for an extension. Plaintiff's underlying claim for appeal is not relevant to this inquiry and Plaintiff has provided no other cause to extend his time to appeal. *See Williams v. KFC Nat. Mgmt. Co.*, 391 F.3d 411, 415 (2d Cir. 2004) ("[T]he appropriate inquiry [in a Federal Rule of Appellate Procedure Rule 4(a)(5) motion] is not whether the underlying claim has merit, but whether excusable neglect or good cause exists for the failure to file the notice of appeal in a timely manner.").

SO ORDERED.

 09/30/2022

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE